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APPENDIX TO RESPONDENT'S BRIEF

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 412

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BATAVIA TIMES LAW PRINTERS
BATAVIA, N. Y.

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Chronological List of Relevant Docket Entries.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

and

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION No. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO.

Cases Nos. 2-CC-333 and 2-CC-355.

4. 6.55	Charge filed in Case No. 2-CC-333.
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6. 9.55	Hearing opened in injunction proceeding before the U. S. District Court, District of New Jersey before Honorable Richard Hartshorne in the matter of *Douds v. Local 680, etc.*, Civil No. 496-55.
6.14.55	Hearing closed in injunction proceeding before the U. S. District Court, District of New Jersey before Honorable Richard Hartshorne in the matter of *Douds v. Local 680, etc.*, Civil No. 496-55.
6.17.55	Notice of hearing and complaint issued.
6.22.55	Order rescheduling hearing from July 11, 1955, to August 15, 1955, in Case No. 2-CC-333 issued by Regional Director.
6.28.55	Answer of Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL,[1] to complaint in Case No. 2-CC-333 sworn to.

[1] Petitioner before this Court and Respondent before the Board

Chronological List of Relevant Docket Entries.

8. 4.55	Order rescheduling hearing from August 15, 1955, to September 19, 1955, in Case No. 2-CC-333 issued by Regional Director.
8.18.55	Charge filed in Case No. 2-CC-355.
9. 6.55	Order rescheduling hearing from September 19 to October 17, 1955, in Case No. 2-CC-333 issued by Regional Director.
9.20.55	Notice of hearing and complaint in Case No. 2-CC-355 issued by Regional Director.
10. 5.55	Answer of Milk Drivers and Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL[2] (petitioner herein) to complaint in Case No. 2-CC-355 dated.
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3.28.56	Petitioner's exceptions to the Intermediate Report and Recommended Order received.
4. 2.56	General Counsel's exceptions to the Intermediate Report and Recommended Order received.
10.25.56	Decision and Order issued.

[2]Petitioner before this Court and Respondent before the Board.

Answer of the National Labor Relations Board to Petition to Review and Set Aside a Portion of an Order of the National Labor Relations Board.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. .....

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), files its answer to the petition to review and set aside that portion of a Board order issued against Milk Drivers and Dairy Employees Local Union 338, etc., and the Board's request for enforcement thereof.

1. Answering the allegations contained in paragraphs 1, 2, and 3, the Board prays reference to the certified transcript of the entire record of the proceedings before the

Answer of the National Labor Relations Board to Petition to Review and Set Aside a Portion of an Order of the National Labor Relations Board.

Board, filed herewith, for a full and exact statement of the pleadings, evidence, rulings of the Trial Examiner, Intermediate Report, findings of fact, conclusions of law and order of the Board, and all other proceedings had in the said matter before the Board.

2. The Board denies each and every allegation of error contained in paragraph 4.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of that portion of said order, dated October 25, 1956, issued against petitioner in the proceedings designated before the Board as Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-333; Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-355.

4. Pursuant to Section 10 (e) and (f) of the Act, the Board has filed a certified list with the Court which represents the transcript of the entire record in the proceedings before it.

WHEREFORE, the Board prays that the Court enter a decree denying the petition to review and set aside and

enforcing in full that portion of the order directed at petitioner.

/s/ STEPHEN LEONARD,
STEPHEN LEONARD,
Associate General Counsel,

NATIONAL LABOR RELATIONS BOARD.

Dated at Washington, D. C., this 10th day of January, 1957.

Answer of the National Labor Relations Board to Petition to Review and Set Aside a Portion of an Order of the National Labor Relations Board.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. .....

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), files its answer to the petition to review and set aside that portion of a Board order issued against Milk Drivers and Dairy Employees Local Union No. 680, etc., and the Board's request for enforcement thereof.

1. Answering the allegations contained in paragraphs 1, 2, and 3, the Board prays reference to the certified transcript of the entire record of the proceedings before the

Board, filed herein, for a full and exact statement of the pleadings, evidence, rulings of the Trial Examiner, Intermediate Report, findings of fact, conclusions of law and order of the Board, and all other proceedings had in the said matter before the Board.

2. The Board denies each and every allegation of error contained in paragraph 4.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act, and pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of that portion of said order, dated October 25, 1956, issued against petitioner in the proceedings designated before the Board as Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-333; Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Case No. 2-CC-355.

4. Pursuant to Section 10 (e) and (f) of the Act, the Board has filed a certified list with the Court which represents the transcript of the entire record in the proceedings before it.

WHEREFORE, the Board prays that the Court enter a decree denying the petition to review and set aside and

enforcing in full that portion of the order directed at petitioner.

/s/ STEPHEN LEONARD,
STEPHEN LEONARD,
Associate General Counsel,
NATIONAL LABOR RELATIONS BOARD.

Dated at W. shington, D. C., this 10th day of January, 1957.

Decision and Order.

On February 21, 1956, Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner with the following modifications.

1. Respondents contend that the Regional Director improperly consolidated the cases herein. Consolidation is a matter for administrative discretion and is provided for in the Board's Rules and Regulations.[1] In the instant cases Respondents were alleged to have sought by unlawful conduct to secure recognition from the same employer and to cause other employers to cease doing business with that employer, the charging party in both cases. Furthermore, witnesses, such as Anderson, general counsel for the charging party, and Keber, secretary-treasurer of Local 680, testified concerning events relating to both cases. Nor have Respondents demonstrated that they have in any way been hindered in the presentation of their defenses or otherwise prejudiced by the consolidation. Accordingly, we reject Respondents' contention that the instant cases were improperly consolidated.[2]

2. For the reasons indicated in the Intermediate Report, we agree with the Trial Examiner that it has not been established that either Respondent participated in, or was otherwise responsible for, the conduct of the other found herein to constitute violations of Section 8 (b) (4) (A) and (B) of the Act. Accordingly, we shall dismiss the allegation contained in the amended complaint that in so violating the Act the Respondents acted jointly. We therefore find it unnecessary to determine whether, as Respondents contend, the allegation of joint responsibility contained in the amended complaint was insufficiently supported by the charges filed in these cases.

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[1] Section 102.33, Rules and Regulations of the National Labor Relations Board, Series 6, as amended.

[2] Cf. *Roadway Express, Inc.*, 108 NLRB 874, fn. 1; *N. L. R. B. v. United Mine Workers of America, District 31, et al.*, 198 F. 2d 389 (C. A. 4) 1952.

3. The General Counsel contends that the remedial orders recommended by the Trial Examiner should be broadened to prohibit each Respondent from attempting, through unlawful secondary pressures, to force Crowley's Milk Company, Inc., to recognize not only that Respondent but the other Respondent and any other labor organization: Activity having such an objective may, we believe, be reasonably anticipated on the part of Respondents in view of the evidence showing that in renewing their campaigns against Crowley's, Respondents were acting pursuant to a decision reached at a meeting of the Eastern Conference of Teamsters. That meeting was held for the purpose of discussing the Crowley case and was attended by representatives of the International Union and local unions handling dairy products throughout the Eastern Seaboard. For this reason we shall amend the orders recommended by the Trial Examiner in accordance with the General Counsel's request.

ORDER.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its officers, representatives, agents, assigns and successors, shall cease and desist from inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, or any other employer, to engage in

a strike or a concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 680, Local 338 or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. The Respondent Milk Drivers and Dairy Employees Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its officers, representatives, agents, assigns and successors, shall cease and desist from engaging in and/or inducing and encouraging employees of Edward Greco, d/b/a Maple Grove Dairy, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338, Local 680 or any other labor organization, as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondents shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their respective business offices copies of the attached notices; Appendix A in the case of Local 680 and Appendix B in the case of Local 338.[3] Copies of said notices, to be furnished by the Regional Director for the Second Region, after being duly signed by official representatives of the Respondents, shall be posted by them immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

Local 680 shall also sign copies of Appendix A and return them to the Regional Director for posting at the premises of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons. Local 338 shall also sign a copy of Appendix B for posting at the premises of Edward Greco, d/b/a Maple Grove Dairy.

(b) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that

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[3] In the event that this order is enforced by a decree of a United States Court of Appeals, these notices shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER," the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

the Respondents acted jointly in violating Section 8 (b) (4) (A) and (B) of the Act.

Dated, Washington, D. C., October 25, 1956.

BOYD LEEDOM, *Chairman.*
STEPHEN S. BEAN, *Member.*
(Seal) NATIONAL LABOR RELATIONS BOARD.

PHILIP RAY RODGERS, MEMBER, concurring:

I concur in the result reached herein by Chairman Leedom and Member Bean for the reasons set forth in my concurring opinions in *Local 1796, et al., (Sand Door & Ply Wood Co.)*, 113 NLRB 1210, and in *Local No. 886, et al., (American Iron Machine Works)*, 115 NLRB No. 121.

Dated, Washington, D. C.

PHILIP RAY RODGERS, *Member.*
NATIONAL LABOR RELATIONS BOARD.

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APPENDIX A

NOTICE TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

Appendix A attached to Decision and Order.

WE WILL NOT induce or encourage employees of INTERNATIONAL MILK COMPANY, SUNRISE DAIRIES, NORTH JERSEY DAIRYLAND, INC., and JOSEPH THOMPSON & SONS, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 680, Local 338, or any other labor organization, as the representative of any of its employees; unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO.

(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Appendix B attached to Decision and Order.

APPENDIX B

D-37

NOTICE TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT engage in and/or induce or encourage employees of EDWARD GRECO, d/b/a MAPLE GROVE DAIRY, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 338, Local 680, or any other labor organization as the representative of any of its employees, unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO.

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by an other material.

Intermediate Report and Recommended Order.

STATEMENT OF THE CASE

Upon a charge and amended charges filed by Crowley's Milk Company, Inc., herein referred to as Crowley's, the General Counsel of the National Labor Relations Board[1] by the Regional Director for the Second Region (New York, New York), on June 17, 1955, issued a complaint against Milk Drivers and Dairy Employees Local Union No. 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, herein referred to as Local 680, alleging that Local 680 had engaged in conduct violative of Section 8 (b) (4) (A) and (B) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 601, herein referred to as the Act. Copies of the charges, complaint and notice of hearing were served upon the parties to the proceedings.

With respect to unfair labor practices the complaint alleges in substance that from on or about March 9, 1955, Local 680, by its officers, agents and representatives, has engaged in, and, by requests, appeals, orders, directions, instructions and other means, has induced or encouraged the employees of certain named employer customers of Crowley's with whom Local 680 has collective bargaining

[1] The General Counsel and the attorney representing him at the hearing are referred to as the General Counsel. The National Labor Relations Board is referred to as the Board.

agreements, and the employees of other employers, to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers, where an object or objects thereof was to force the secondary employers to cease dealing in the products of Crowley's and or forcing the secondary employers to cease doing business with Crowley's and/or forcing Crowley's to recognize or bargain with Local 680 as the exclusive collective bargaining representative of its employees, although Local 680 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

Local 680, in its answer to this complaint, dated June 28, 1955, admits certain jurisdictional allegations, but denies the commission of any unfair labor practices.

Another complaint was issued by the Regional Director, on September 20, 1955, against Milk Drivers and Dairy Employees, Local Union No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO; herein referred to as Local 338, based upon a charge filed by Crowley's. With respect to unfair labor practices, this complaint alleges in substance that, from on or about April 1, 1955, Local 338, by its officers, agents, and representatives, has engaged in, and by picketing, requests, appeals, orders, directions, instructions and other means, has induced or encouraged the employees of Maple Grove Dairy, a customer of Crowley's, and the employees of other employers to engage in strikes or concerted refusals in the course of their employ-

ment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform services for their employers, where an object or objects thereof was to force the secondary employers to cease dealing in the products of Crowley's and/or forcing the secondary employers to cease doing business with Crowley's and/or forcing Crowley's to recognize and bargain with Local 338 as the exclusive collective bargaining representative of its employees, although Local 338 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

Local 338, in its answer to this complaint, dated October 5, 1955, admits certain jurisdictional allegations, but denies the commission of any unfair labor practices. It admits that Local 338 had been engaged in efforts to organize Crowley's employees and, in connection with such efforts has picketed in the vicinity of Crowley's plants. It further alleges that at all relevant times there has been in force a written collective bargaining agreement between Local 338 and Maple Grove wherein it is provided that employees covered by the contract shall not be required in the course of their employment to handle material received from any employer with whom that Local and other sister locals has a labor dispute, that Local 338 informed Maple Grove that it and Local 680 were engaged in a labor dispute with Crowley's and that members of Local 338 employed by Maple Grove were therefore not required in the course of their employment to handle products received from Crowley's. It is also alleged that at all times relevant it was not within the scope of employment of employees of Maple Grove to handle Crowley's products.

Intermediate Report and Recommended Order.

On October 12, 1955, the Regional Director consolidated the cases against Locals 680 and 338. An amended complaint was issued against both locals on October 14, 1955. This complaint incorporated the allegations contained in the separate complaints issued against each local and, in addition, alleged that these locals were jointly and severally responsible for all the alleged unfair labor practices. No answers were filed to this amended complaint; both locals contended that the consolidation of the cases was improper and that the allegation of joint responsibility was beyond the scope of the charges.

At the outset of the hearing, counsel for Local 338 objected to the consolidation and moved to sever on the ground that the order of consolidation was issued without prior notice to Local 338 or any opportunity to state its position or to learn what facts and circumstances were considered in connection with the order. He maintained this was a denial of due process. He also pointed out that whereas the original charge accused Local 338 of violations of the Act in connection with one employer, the amended complaint required it to prepare to defend itself on activities occurring in connection with the operations of 15 or 16 employers. Local 680 joined in the motion to sever. The General Counsel argued that the original order of consolidation was within the discretion of the Regional Director, pursuant to the Board's Rules and Regulations, and that the cases should remain consolidated in view of the allegations of the amended complaint that the Respondents acted jointly and severally. The motion to sever was denied.

Counsel for Local 680 then moved to dismiss the complaint on the ground that the complaint alleges that Locals 680 and 338 participated in certain joint action while none of the charges makes such an allegation. Local 338 joined in this motion. The motion was denied.

The motions to sever and to dismiss were renewed by the Respondents at the conclusion of the presentation of evidence. Decision was reserved. They are disposed of by the findings and conclusions herein.

Opportunity was also afforded for the filing of briefs and/or proposed findings of fact or conclusions of law or both. A memorandum was received from Local 338 and a brief from Crowley's.

Upon the entire record and from his observation of the witnesses the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Company

Crowley's Milk Company, Inc., is and has been at all times material hereto a New York corporation, having its principal office and place of business in Binghamton, New York, with other plants, places of business, warehouses, and other facilities at Paterson, New Jersey, Newburgh, New York, Middletown, New York, and Allentown, Pennsylvania. At all times here relevant it has been engaged at these plants, places of business, warehouses, and milk depots and receiving stations in the purchase, processing, manufacture, sale, distribution, and delivery of milk, cream, cheese, ice cream mix, and other milk products.

Crowley's, in the course and conduct of its business operations during the past 12-month period, which period is representative of all times material hereto, caused to be purchased, transferred and delivered to its above-mentioned plants and places of business located in the States of New York, New Jersey, and Pennsylvania, milk and other goods and materials valued in excess of $1,000,000, of which goods and materials valued in excess of $500,000 were transported to said plants and places of business in interstate commerce directly from States of the United States other than the States of New York, New Jersey, and Pennsylvania wherein said plants and places of business are located.

During the past year, Crowley's in the course and conduct of its business operations, caused to be processed, manufactured, sold and distributed at said plants and places of business products valued in excess of $1,000,000, of which products valued in excess of $500,000 were shipped from said plants and places of business in interstate commerce directly to States of the United States other than the States of New York, New Jersey, and Pennsylvania wherein said plants and places of business at which said products were manufactured are located.

The parties stipulated that at all times material Crowley's was and is engaged in commerce within the meaning of the Act and the undersigned, in accordance with prior decisions of the Board involving this Company,[2] so finds.

[2] 88 NLRB 1049, 40 NLRB 1280. Standards established by the Board for the assertion of jurisdiction in 8 (b) (4) (A) proceedings have been met. *(Local 11, United Brotherhood of Carpenters and Joiners, etc. (General Millwork Corporation)*, 113 NLRB No. 124).

II. The Labor Organizations Involved

Milk Drivers and Dairy Employees, Local Unions No. 680 and No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, of America, AFL-CIO, are labor organizations within the meaning of the Act.

III. The Unfair Labor Practices

A. *Background*

Preliminary Note

Prior to the issuance of the complaint against Local 680, the Reginal Director commenced proceedings for an injunction in the United States District Court for the District of New Jersey. A hearing was held on June 9, 10, and 14, 1955 before the Hon. Richard Hartshorne, D. J., at which oral testimony and exhibits were presented. The parties to the present proceeding stipulated that certain witnesses in the New Jersey proceeding, if called upon to testify in the present proceeding, would testify as indicated in portions of the New Jersey transcript which were received in evidence as an exhibit.

An injunction proceeding was also brought against Local 338 in the United States District Court for the Southern District of New York. This proceeding was referred to in statements of counsel and in stipulations in the present proceeding, but no part of the record was incorporated herein. The undersigned has based his findings on the pleadings and exhibits introduced in evidence (these exhibits included those in the New Jersey proceeding), certain oral testimony in the New Jersey proceedings, brief

oral testimony herein, stipulations by the parties, argument of counsel, and memoranda submitted.

With respect to the testimony in the New Jersey proceeding, the undersigned cautioned counsel that not having seen the witnesses he was in no position to resolve any conflicts in testimony. The General Counsel and counsel for Local 680 took the position that while there were some conflicts in testimony, these would not affect the issues to be resolved herein. They did not feel it necessary to introduce further testimony. The undersigned has used the New Jersey testimony to the extent that matters referred to were not in dispute.

Injunctions were denied in the New Jersey proceeding (133 F. Supp. 336 (D. C. N. J.), July 11, 1955); and in the New York proceeding (memorandum opinion by Hon. Sidney Sugarman, D. J., November 17, 1955).

Board decisions outline labor relations at Crowley's and organizational efforts of Locals 680 and 338.

As to Local 680, a decision involving it and Crowley's is reported in 88 NLRB 1049 (March 13, 1950). The following background material is set forth in that case: A labor organization, United Dairy Workers Association, was certified by the Board, in 1942, as exclusive bargaining agent for Crowley's production and maintenance employees at its Binghamton plant. In September 1945, a contract was made with the Newburgh, New York, local of the Association. In October 1945, the Association organized the Paterson, New Jersey, plant and contracts were thereafter effected with Crowley's. The three locals joined in negotiations with Crowley's, but separate contracts were executed with each local.

Intermediate Report and Recommended Order.

In January 1948, the Paterson local of the Association sent a letter to Crowley's expressing its readiness to enter into negotiations for a 1948 contract. In February, Local 680 notified Crowley's that it claimed to represent employees at the Paterson plant. It also filed with the Board a petition for an election and certification of representatives.

On July 1, 1948, Local 680 filed a charge against Crowley's alleging that it had engaged in unfair labor practices including an allegation that Crowley's, in violation of the Act, had failed to bargain collectively with it as the duly designated representative of employees in an appropriate unit at the Paterson plant.

Crowley's filed a charge against Local 680 alleging a violation of the boycott provisions of the Act. The Regional Director refused to issue a complaint on this charge and his ruling was upheld by the General Counsel on August 14, 1948.

The Board in September 1948 directed an election on the representation petition filed by Local 680 (79 NLRB 602). This election was not held because the request for an election was withdrawn.

The status of Local 680 as bargaining representative was considered in hearings on the unfair labor practice charge it had filed against Crowley's. On March 13, 1950, the Board issued its Decision and Order (88 NLRB 1049), in which it found that Crowley's had violated the Act by recognizing and entering into a contract with the Association while a question concerning representation of the Paterson employees was pending before the Board, and that a

strike of employees which was economic in its inception was converted into an unfair labor practice strike by Association recognition and the granting of a wage increase and a new contract. However, the Board dismissed the allegations of an unlawful refusal to bargain. It held that it had not been established that Crowley's failure to recognize the Union on its demand was in bad faith. It ordered the reinstatement of the strikers upon their application, the withdrawal of recognition of the Paterson local of the Association, and the posting of a notice.

On August 8, 1951, the Board remanded the case to permit the parties to adduce relevant testimony concerning the strikers' rights to reinstatement (95 NLRB 1023). Counsel for Local 680 first attempted to find the former strikers but, on December 14, 1951, wrote the Regional Director, in part, as follows:

> • • • It appears now that the lengthy delay in processing the case before the Board has resulted in the employees involved who were refused reinstatement, securing employment elsewhere, and they have all lost interest in further proceedings in this case. They have informed the union that they do not desire to cooperate or to testify or to have anything further to do with the proceedings.
>
> In these circumstances, the union concludes that no useful purpose will be served in further hearing.

Thereafter, Local 680 took no further part in the proceedings.

In its supplemental Decision and Order (102 NLRB 996) the Board found that only one of the strikers evinced any

interest in reinstatement with back pay. The orders of the Board were enforced (208 F. 2d 444 C. A. 3).

Local 338 first requested recognition from Crowley's in 1945. On November 17, 1950, it filed a petition for certification of representatives for a unit of employees at the Newburgh plant. The petition was dismissed by the Regional Director and his ruling was upheld by the Board on February 23, 1951.

Another petition was filed by Local 338 on February 27, 1951, for a unit at the Newburgh plant. This petition was dismissed by the Regional Director on November 4, 1952, for failure to cooperate in the investigation.

A charge alleging a discriminatory discharge of four employees at the Newburgh plant was filed by Local 338 on January 5, 1951. This charge was dismissed, administratively, on July 23, 1952, for insufficient evidence. This ruling was sustained on appeal to the General Counsel on October 2, 1952.

At the time of the hearing, Crowley's employees at its Binghamton plant following an earlier Board certification, were represented by the United Dairy Workers Association. Employees at the Newburgh and Middletown, New York, plants were represented by the Newburgh local of the Association. An organization called the Collective Bargaining Committee of Employees of Crowley's Milk Company, Inc., represents employees at the Paterson, New Jersey plant. Crowley's does not recognize or bargain collectively with any other labor organization except the three listed above.

B. *Current union activities at plant premises*

Richard Keber is secretary-treasurer of Local 680. He played a key part in current activities directed against Crowley's and gave detailed testimony at the New Jersey proceeding.

According to Keber, Local 680 stopped picketing Crowley's in 1949 after a year and a half of such efforts. One of the reasons for discontinuing the picketing, according to Keber, was the fact that the International organization was forming an Eastern Conference of Teamsters and Local 680 was advised that disputes such as the one it had with Crowley's would be handled better after that Conference was established.

The Eastern Conference was established and a meeting was held, at a date not fixed in the record, for the purpose of discussing the Crowley case. Representatives from the International and local unions who handled dairy products throughout the Eastern Seaboard, including representatives from Locals 338 and 680 attended. There was discussion of common action against Crowley's and agreement to take joint action. Local 680 went out on or about April 1, 1955, started picketing and is continuing to picket Crowley's Paterson, New Jersey, plant with signs reading, "Crowley's Milk Company unfair to Local 680." At approximately the same time Local 338 started picketing the Binghamton and Newburgh, New York, plants with signs reading, "Employees of Crowley's Milk Company, join Local 338."

C. *Activities at premises of secondary employers*

1. By Local 680

Local 680 and 58 employers in the business of milk handling and distributing are parties to a standard contract entitled, "Metropolitan Area Agreement of the Milk Drivers and Dairy Employes Local 680." The contract is here referred to as the Standard Milk Contract.

Local 680 and 19 employers engaged in the manufacture of ice cream are parties to a standard contract entitled, "Agreement, New York City, Northern New Jersey and Southern New York State Area-Wide Union Agreement in the Ice Cream Industry of the Ice Cream Drivers and Employees Union Local 680." The contract is referred to as the Standard Ice Cream Contract.

On March 9, 1955, Local 680 sent the following letter to all employers who were parties to the Standard Milk Contract:

> This Local Union, Local 680, and also our sister Local, 338, are and have been for some years, directly engaged in a labor dispute with Crowley's Milk Co. In fact, on a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Co. was found by the Board and the Courts to have engaged in an unfair labor practice.
>
> May we remind you of section 18 (d) of our contract, which reads as follows:
>
> > "It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any

employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this agreement for the members of the union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the union has given written notice to the Employer of the existence of such labor dispute."

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Co. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Co. and will discontinue making deliveries or pickups to or from this company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested, in order that we may avoid taking steps to enforce our contract.

An identical letter was sent to all employers who were parties to the Standard Ice Cream Contract except that it quoted Section 5 (d) of the Ice Cream Contract. This section refers to Locals 757, 338, and 680, but otherwise is identical in language with Section 18 (d) of the Milk Contract.

On the same day letters were dispatched to the employers, Local 680 sent copies of the letters to its approximately 100 stewards at the respective companies with a letter reading:

> Dear Sir and Brother:
>
> Enclosed find copy of letter that was sent to your employer. Please see to it that all members under your jurisdiction will abide by the enclosed letter.

This letter was the only general instruction given to all the stewards. It was stipulated that some of the shop stewards posted copies of the letters they received on the bulletin boards at their plants.

Keber testified that Local 680 has a president, Lawrence McGinley, a secretary-treasurer, Keber, two business agents, Albert Cooke and Anthony Iorio, and shop stewards. Keber testified that Local 680 contracts require that all stewards and other members obey orders. If they believe a contract is being violated, they can report the alleged infringement to the union office. They cannot, according to Keber, take independent action and have been so instructed.

As to the sentence in the letter sent the stewards: "Please see to it that all members under your jurisdiction will abide by the enclosed letter," Keber declared he meant that if the employer refused to cooperate, the stewards should communicate with Local 680 for further instructions. His testimony on this point in the New Jersey proceeding is as follows:

> The Witness: We meant that the shop steward who is the representative of our local union locally in each

branch in all disputes and controversies that arise in that particular branch or plant, they must first be discussed of course with the shop steward—we took it upon ourselves to feel that the employers would contact the shop stewards regarding our letter to them referring to the Crowley products. Our shop stewards because of our meetings and instructions to them know that when a letter like this is sent out that they are to do whatever they can to have an employer cooperate with the letter and if the employer refuses they then must of course call the union office for further instructions and in this particular case we have only had as far as I know four calls from the fifty some-odd companies where the employers did not exactly refuse to cooperate with the letter but called up and said that they had a certain problem because of the letter that we sent.

• • •

The Witness: It meant our shop stewards were to inform the rest of the employees and show them a copy of the letter that we sent to the employer requesting the employer to cooperate, to discontinue handling the product and if an employee was instructed directly, directly instructed by the employer to handle it, that they must handle it and immediately contact the Union office.

He also testified that after April 1 he expected all his members not to handle Crowley's products in the absence of a direct order from their employer. If an order were given, it was expected that the men would handle the shipment, but notify Local 680.

In a discussion between the Court and counsel in the New Jersey hearing, counsel for Local 680 stated that it was his position that the letter from Local 680 to its stewards "was a statement to the employees that absent an instruction from an employer, they were not to handle the product."

Keber testified that only four employers voiced any objection to the March 9 letter, International, Sunrise, Thompson, and North Jersey.

International Milk Company

International Milk Company and its subsidiary, Town Talk Ice Cream Company, were customers of Crowley's. International and Town Talk are under contractual obligation to Local 680. Charles Shuta is the shop steward of the Union for both concerns. After International and Town Talk received letters from the Local 680 asking for a cessation of business relations they found themselves in a dilemma in view of contractual obligations they also had with Crowley's. The concerns did not observe the April 1 deadline and received a shipment from Crowley's on April 4.

Albert Blum, president of both companies, when he went to plant premises on April 4, found a Crowley's truck on plant premises parked and not being unloaded. He was told that Charles Shuta, the Local 680 shop steward had told platform men not to unload the truck.[3] After Blum

[3] Shuta, according to William P. Coyle, a salesman for Crowley's, stopped a Crowley's truck at the International platform and told Coyle, who spoke with him, that on orders of Local 680 he would not allow Crowley's merchandise to be accepted and that if a delivery were made, there would be a boycott. Coyle reported this to Blum. The driver of the truck, Frank Berardi, testified Shuta prevented his making a delivery and told him there was a notice posted on the bulletin board stating the men were not to handle Crowley's products.

checked personally with Shuta and was informed by the latter that he had issued orders not to unload the truck on instructions from Local 680, he telephoned Keber and was told by Keber, according to Blum, that the instructions had come from the office of the Union.[4] Blum replied that the Crowley's goods would have to go back in view of those instructions. The shipment was returned and no further orders were placed with Crowley's. Blum's decision not to continue with Crowley's was as a result of the contract with Local 680 and his understanding of the instructions issued by it.

About a week prior to the April 4 incident Blum had had a conversation with Shuta in which he told Shuta that in view of contractual obligations he would let a shipment come to the plant after April 1 and see what happened. Shuta replied the shipment would not be unloaded. Blum acquiesced in the action of Local 680 and its members and at no time did he issue affirmative instructions to employees of International or Town Talk to handle Crowley's deliveries. Employees were expected to unload and handle all products as they arrived.

Keber maintained that Blum did not tell him the men were refusing to obey instructions.

Shuta testified that he posted the March 9 letter on the bulletin board of his company. He further testified that he understood the letter to mean, "That we had a contract with the Company and that all members should abide with

[4] Keber testified he told Blum that Local 680 had a dispute with Crowley's, that the letter of March 9 was official, and that the Union would insist on its contract rights. He denied that Blum told him that the men were refusing to obey instructions or that he said the men were instructed not to handle Crowley's goods.

the orders." However, he also stated that there were outstanding union instructions that all members should obey orders from their employers whether they considered them right or wrong.

His version of his conversation with Blum 10 or 15 days after the receipt of the letter is that Blum told him he was under contract to Crowley's but he, Shuta, pointed out that Blum also was under obligation to Local 680, in accordance with the posted letter. Blum said he did not want any trouble with the Union and would get in touch with it.

As to the April 4 attempt to make a delivery by a Crowley's driver, Shuta's version of the incident is as follows:

> Q. Now what happened on April 4th?
>
> A. On April 4th, between the hours of 8:30 and 9 o'clock in the morning Crowley's milk truck came in with a load of cream and milk. I happened to be there and the fellow pulled in. I told the driver to hold the truck up, pull it up to the front of the garage so he wouldn't hold up the drivers on the platform. He said, "What was the matter?" I said, "You know we have a labor dispute," I says, "your company had an order issued to them by mail." He said—well, he referred me to Mr. Coyle, the salesman who was following the truck into the plant, and Mr. Coyle asked me what was the matter, and I said, "You know what is the matter," I said, "the deadline was April 1st." I says, "We refuse to handle your merchandise." So he wanted to know where the superintendent was and I referred him to the warehouse which is a half a block away from the plant. So he talked to the superintendent of the

warehouse and it seems as though he wanted the superintendent to unload the truck. The superintendent and Mr. Coyle came in with me into the plant and they were talking. So the superintendent says to me, "What do you want me to do, unload the truck?" I said that was "up to you, Mr. Middleton, you can do what you like."

Q. Then what happened?

A. They went in the office, Mr. Coyle and Mr. Middleton and the superintendent and the president, Mr. Blum. They were in the office talking. What went on there I do not know. I wasn't there present.

Q. You were in for a short time, were you not?

A. After they had their discussion.

Q. Then what happened?

A. He asked me--

Q. Who asked you?

A. Mr. Blum asked me in the office, he says, "Is there anything that we can do?" I said, I wouldn't know. The only thing is you have a contract here, and I said, "You have a letter to this effect and that is all I am going by." He said we have a contract. I said I am sorry and I walked out of the office.

No affirmative orders were issued to employees to handle that delivery. Shuta testified he would not unload the truck because of the contents of the letter from Local 680.

Sunrise Dairies

Sunrise Dairies is a party to the Standard Milk Agreement. It has done business with Crowley's for over 20 years. The steward on the job is Belfort Del Vecchio. The company received the March 9 letter, but, according to Bo

Adlerbert, its president; the letter was disregarded. On Friday, April 1, Crowley's attempted to make a delivery at Sunrise. An employee, Roberts, refused to accept delivery, maintaining he had been instructed by the union steward not to handle Crowley's goods. Adlerbert had the Crowley's driver put the delivery, some tins of cottage cheese, on a conveyor and Adelbert took them off the conveyor at the other end and stored them.

Joseph Grenci is plant manager of the company. On Saturday, April [illegible] Adelbert instructed Grenci to [illegible]ckage the cheese delivered by Crowley's the preceding day. Grenci testified he instructed an employee, Quinn, to package the cheese. Quinn refused to do so claiming he would have to receive further instructions from the shop steward first. Grenci spoke with Del Vecchio, told him that future shipments from Crowley's were being stopped, but there was a problem with the cheese on hand. Del Vecchio replied that in view of the cooperation of the company the cheese could be packaged. This was done.

On April 4, after another employee's refusal to handle Crowley's goods, Adelbert telephoned Keber and asked him whether men at the plant had been instructed not to handle Crowley's products. Keber replied, according to Adelbert, "Yes, they are not supposed to touch the products of Crowley Milk Company." Adelbert said that he wanted to continue doing business with Crowley's, but Keber refused to revoke the instructions to the men and Adelbert stopped doing business with Crowley's because the men would not handle Crowley's products. No affirmative instructions were issued to the employees to handle those products.

Keber testified he told Adelbert that Local 680 had a labor dispute with Crowley's and expected his company to live up to its contract with the Union and not handle Crowley's products. He denied that the question of purported instructions by him to employees not to handle Crowley's products was discussed, that the shop steward or his instructions was disdussed, or that he was told the men were refusing to obey orders. He maintained that h would consider it a violation of contract by Sunrise for it to continue normal business relations with Crowley's.

Del Vecchio did not post the March 9 letter, but told two employees who worked in the cooler about it. He told them he had received a letter from the Union that there was a labor dispute with Crowley's and "we were advised not to accept any of their products until further notice." Del Vecchio also told them, according to his testimony they were not to refuse any direct orders. On April 2 Del Vecchio was told by Grenci, the plant manager, that a Crowley's shipment had not been accepted by him the previous day, but that Adlerbert had signed for the shipment of cheese. Grenci stated that he had asked employee Quinn to package the cheese, but the latter had not carried out the assignment. Del Vecchio promised to speak to Quinn immediately. On the way he met an office employee, Harvey, who told him: "I am sorry the way it turned out but there will be no future deliveries from Crowley's." Del Vecchio did testify that he told both Grenci and Harvey that since the company was cooperating with the Union he would tell Quinn to pack the cheese and did so. He denied telling Quinn about the letter or telling him not to pack Crowley's products.

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North Jersey Dairyland, Inc.

North Jersey Dairyland, Inc., was a customer of Crowley's up to April 1, 1955. It also is a party to the Standard Milk Agreement. Frank Elias is the shop steward. On the morning of April 1, Rudolph Lang, president of the company, was told by Elias, according to the former, he was going to tell an ice cream maker at the plant not to handle Crowley's ice cream mix, pursuant to instructions he had received from the Union. When Lang was informed that the ice cream maker, George Machuella, was refusing to use the Crowley's mix, he issued instructions to send Machuella home because there was no other work for him. Elias went to Lang and told him that if Lang sent Machuella home, he, Elias, would have to take Machuella to union headquarters, according to instructions from the Union. Lang could not spare Elias and also run the risk of paying him for time away from the job. He obtained some other mix, kept the men working. He discontinued purchasing from Crowley's because of the refusal of his employees to handle Crowley's products after April 2, when there was a delivery received from Crowley's.

Lang, on April 7, 1955, wrote a letter to Local 680 in which he stated, in substance, that he was not certain whether the Union's position was correct and suggested that it be agreed that his company continue to use Crowley's products until the matter could be arbitrated. Local 680 made no reply to this letter, but Keber prior to the letter being sent had had a conversation with the attorney for the company in which he maintained that Local 680 was acting in accordance with its contractual rights and referred the attorney Elmer Goodwin, to counsel for the

Union.[5] Lang did not give any orders to his employees after the April incident directing them to handle Crowley's products.

Local 680 stipulated that its shop steward, Elias, told employees on April 1 not to handle Crowley's products. It maintained these instructions were revoked the next day on instructions from the Union.

Keber testified that he learned that Elias had given direct orders not to handle Crowley's products and Iorio, a union business representative, was sent to North Jersey to straighten matters out.

Elias testified that when he saw a delivery of ice cream mix being made from a Crowley's truck on April 1 he told an ice cream maker, George Machuella not to handle Crowley's products. Later, Elias told an employee a Local 680 member of the situation. The next day, Tony Iorio, a union business agent, told him he had violated union laws under which members were supposed to obey orders and told him to tell Machuella he could handle Crowley's products. This was done, according to Elias.

Elias remembered speaking to Lang and McCormick, an employee of the company, on April 1. He could not recall what he told Lang. He remembered telling McCormick that Machuella should not handle the Crowley's mix. He further testified that he could not remember telling Lang he would have to take Machuella to the union hall if the latter were sent home.

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[5] Goodwin also testified that Keber told him that the men could not handle Crowley's products.

Joseph Thompson & Sons

Frank G. Thompson, a partner in the dairy processing firm of Joseph Thompson & Sons, testified that he returned from a vacation on March 30, 1955, and then first saw Local 680's letter of March 9. On March 31 he wrote the Union that he had been advised by Crowley's that there was no labor dispute pending between it and the Teamster locals named in the union contract and that Thompson's attorney was doubtful of the validity of the contract clause and the cooperation requested by Local 680. He requested that the matter be submitted to arbitration and that the letter of March 9 be withdrawn pending the decision of the arbitrator. On the day the letter to Local 680 was sent or the next day, Thompson continued, Isaac Fevang, the union steward on the job, spoke with him and told him that he was advised "down below" that the Company would have to discontinue handling Crowley's products; otherwise he would have to advise the men not to handle them. Thompson replied that he was satisfied with Crowley's products but would make other arrangements after the next delivery from Crowley's. This was done. No specific orders to handle Crowley's products were given to employees after Thompson talked with Fevang.

Local 680 on April 1, 1955, replied to Thompson's letter. It expressed willingness to arbitrate, but refused the request to postpone the application of the hot goods provision of its Contract (Sec. 18 D). The letter, signed by Keber but dictated by counsel, concluded: "You are at liberty to request arbitration, and if you do, we shall engage in arbitration proceedings with you. Meanwhile, however, our members will not handle Crowley's Milk or milk products."

Fevang testified that stewards were instructed by the Union to obey orders, but to report to the Union any infractions of the labor contract. He received a copy of the March 9 letter. He understood the letter to mean that the union members should not handle Crowley's products in the absence of a direct order from the employer. However, he did not call the letter to the attention of the union members at Thompson. After Thompson returned from his vacation, Fevang spoke with him on April 1 or 2 and asked him not to handle Crowley's products. He denied giving Thompson any ultimatum or stating the men would not handle Crowley's products. He had no instructions or communications from the Union on this matter other than the March 9 letter. He denied that a final Crowley's shipment was handled on April 4 or 5 only after specific assurance was obtained from Thompson that no more orders would be placed with Crowley's. He did admit that Thompson told him it would be the last shipment.

* * *

On September 26, 1955, Local 680 sent a letter to all employers with whom it had contracts telling them that despite information to the contrary its dispute with Crowley's still continued. It asked continued cooperation and compliance with the contract by not handling Crowley's products.

2. By Local 338

Local 338 and certain employers are parties to a standard agreement entitled, "Milk Industry Collective Bargaining Agreement." On March 17, 1955, Local 338 sent the following letter to all employers who were parties to the standard contracts:

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Gentlemen:

Local 680 and Local 338 are directly engaged in a labor dispute with Crowley's Milk Company. On a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Company was found by the Board and the Court to have engaged in an unfair labor practice. May we remind you of Section 18 (d) of our contract which reads as follows:

"It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the Union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Employer of the existence of such labor dispute."

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Company. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Company and will discon-

tinue making deliveries or pickups to or from this Company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested. Please acknowledge receipt of this letter.

Very truly yours,

/s/ JOHN A. MANCHESTER,
Secretary-Treasurer, Milk Drivers and Dairy Employees Local 338

Edward Greco, doing business as Maple Grove Dairy, is a dealer in milk and milk products and, as of April 1, 1955, was a customer of Crowley's and distributor of its products. Greco was a party to the standard contract and received a copy of the March 17 letter. On March 24, Greco sent the following letter to Local 338:

> Reference to your letter of March 16, I have contacted Continental Can Company to make up containers under our trade name for the by products we purchase from Crowley's Milk Company. The best service they can promise is 6 to 8 weeks to get our plates made up and approved, so Best regards

In or about April 1, 1955, Manchester telephoned Greco and asked him not to handle Crowley's products. Greco replied that he would discontinue handling Crowley's products when he obtained containers bearing his own label.

At a union meeting held in or about June or July 1955, and attended by employees of Greco and other companies party to the standard contract, William F. Kenndy, busi-

ness agent of Local 338, stated that Local 338 had sent a copy of the March 17 letter to Greco and that his employees would soon have to stop handling or working upon Crowley's products, they did not have to handle Crowley's products by the terms of the standard contract, could not be discharged for such a refusal, and should not handle Crowley's products.

On or about August 1, 1955, Manchester telephoned Greco and asked him whether he was still handling Crowley's products. When Greco replied that he was, Manchester stated he would call Greco's employees out on strike. On or about August 2 and since that date Local 338 instructed and directed its members employed by Greco not to handle, transport, work on, or process Crowley's products. Up to or about August 8, 1955, employees of Greco regularly handled, transported, worked on, and processed Crowley's products. Pursuant to the aforesaid instructions from Local 338 employees of Greco, from on or about August 8 have refused to handle, transport, work on or process Crowley's products. An object of the conduct of Local 338, it was stipulated, was to have Greco, doing business as Maple Grove, stop handling Crowley's products.

Greco, on his part, attempted to continue handling Crowley's products. It was stipulated that on or about August 8 Greco orally directed his employees to handle Crowley's products, but the employees followed instructions from Local 338 and refused to handle those products. On August 9, Greco posted the following written notice on the bulletin board in the company drivers' room:

Notice to All Employees

As your employer I, hereby direct you to distribute & sell all Milk & Milk Products that I purchase for resale. Including products from Crowley's Milk Co.

ED GRECO

Notwithstanding this notice, the employees refused to and still continue to refuse to handle Crowley's products, pursuant to instructions from Local 338.

D. *Contentions of the Parties: Conclusions*

1. Effect of the "hot cargo" provisions

The Respondents are charged with violating Section 8 (b) (4) (A) of the Act. This Section, so far as material here, provides:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

• • • "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring • • • any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative

> of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; * * *

No contention has been raised as to the primary picketing conducted at Crowley's premises by the two locals. What is involved is the legal effect of their conduct so far as it relates to secondary employers, customers of Crowley's, and their employees.

The Respondents contend that the so-called "hot cargo" clauses which were in all their contracts furnish a complete defense to the charges and permitted the issuance of the letters and instructions summarized in the prior sections of this Report. Local 680 had a standard provision stating that it would not be a violation of the agreement for members of the Local to refuse to handle material received from or to make deliveries to or pickups from any employer with whom Local 680 or certain sister locals had a labor dispute. Local 338 has the identical clause in its standard contract.

The legal effect of certain hot cargo clauses has been construed by the Board and the Courts in several cases.

In the *Conway* case,[8] the Board considered the validity of the following two hot cargo clauses:

> The Union reserves the right to refuse to handle goods from any firm or truck which is engaged in any controversy with this or any other Union.
>
> The Union reserves the right to refuse to accept the freight from or to make pick-ups from or deliveries to establishments where picket lines, strikes, walkouts and lock-outs exist.

[8] *Rabouin d/b/a Conway's Express*, 87 NLRB 972.

It made the preliminary finding:

> In reliance on this contractual provision, Respondent's shop stewards at each of the three establishments ceased handling Conway's freight upon being advised by the Respondent's office that the Conway strike was "on." And each of the employers, apparently mindful of its contractual obligation, acquiesced in its employees' refusal to handle the "hot" cargo. (P. 981)

It then held:

> It is evident from these facts that the three secondary employers, in effect, consented in advance to boycott Conway's. As they consented, their employees' failure to deliver freight to or accept freight from Conway trucks was not in the literal sense a "strike" or "refusal" to work, nor was any such concerted *insubordination* contemplated by the Respondent when it caused the employees to exercise their contractual privilege. In the circumstances, Section 8 (b) (4) (A) cannot apply, unless we accept the General Counsel's argument that the "hot cargo" contracts were repugnant to the policy of the amended Act and therefore invalid after the effective date of the 1947 amendments. But we find no merit in this argument. Section 8 (b) (4) (A) of the Act prohibits *labor organizations* from "forcing or requiring" the participation of neutral employers in secondary boycotts by the use of certain forms of employee pressure, namely, strikes or work stoppages (either actually engaged in, or "induced" or "encouraged" by the union). This section does not proscribe other means

by which unions may induce employers to aid them in effectuating secondary boycotts; much less does it prohibit *employers* from refusing to deal with other persons, whether because they desire to assist a labor organization in the protection of its working standards, or for any other reason. An employer remains free, under that section of the amended Act, as always, to deal with whatever firms, union or nonunion, he chooses. And by the same token, there is nothing in the express provisions or underlying policy of Section 8 (b) (4) (A) which prohibits an employer and a union from voluntarily including "hot cargo" or "struck work" provisions in their collective bargaining contracts, or from honoring these provisions. That is all that happened in this case. (Footnotes omitted.) (P. 982-3)

The Board's decision in the Conway case was affirmed on review in the Court of Appeals.[7] The Court expressly upheld the validity of the negotiation of hot cargo clauses, stating:

The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer * * * to cease doing business with any other person," § 8 (b) (4) (A). (P. 912-13)

[7] 195 F. 2d 906.

It also upheld the validity of requests *to neutral employers* not to accept shipments from any employer against whom a union was striking.

In the *Pittsburgh Plate Glass Company* case, 105 NLRB 740, the Board specifically considered the validity of direct appeals by a union to employees of secondary employers not to handle the goods of a primary employer when the Union and the secondary employer were parties to a contract with a hot cargo clause. In this case the Board, after reviewing the evidence, found "that during the period involved herein, the Respondent engaged in, and by its instructions and other appeals, induced and encouraged the employees of various trucking carriers [the secondary employers] to engage in a concerted refusal to handle Pittsburgh [the primary employer] freight." (p. 743) It further found that with but one belated exception the employers affirmed the contracts by acquiescing in their enforcement. It then concluded:

> So, as the employers in this proceeding consented to the "unfair goods" provision of the contracts, their employees' failure to handle these goods was not a strike or concerted refusal to work under Section 8 (b) (4) (A). Nor was their employees' refusal to handle Pittsburgh freight "in the course of • • • employment" within the meaning of Section 8 (b) (4) (A) for that employment as defined by the contracts excluded from the required job duties work on "unfair goods." It cannot be said, therefore, that by causing the employees to exercise their contractual privilege, the Respondent induced a concerted refusal to work in the course of employment with an object of forcing any employer

to cease doing business with any other person in violations [*sic*] of Section 8 (b) (4) (A). We concluded it matters not that the contracts did not reserve to the Respondent as distinguished from the employees the right to refuse to handle "unfair goods." (page 744)

The decision in the *Pittsburgh Plate Glass* case was cited and followed in the case of *Madden v. Local 442, International Brotherhood of Teamsters, etc.*, 114 F. Supp. 932, (U. S. D. C., W. D. Wis.) where an injunction was refused although the Court found that there had been inducement or encouragement of employees of secondary employers to cease handling goods of a primary employer, holding that there had been a valid exercise of the right to enforce a hot cargo clause.[8]

Local 338 relying on the *Conway* and *Pittsburgh Plate Glass* cases contends that its activities were identical with those in those two cases and that its hot cargo clause furnishes a valid defense for the reasons set forth in those cases.

The Board has reviewed the *Conway* doctrine in the case of *McAllister Transfer, Inc.*, 110 NLRB 1769. In the McAllister case there was an "unfair goods" clause between a union and certain freight carriers providing that it would not be a violation of the contract nor a reason for discharge for an employee to refuse to go through a picket line or refuse to handle unfair goods. An addition was later added stating that the union and its members, individually and collectively, reserved the right to refuse to handle goods of

[8] A memorandum decision to the same effect was handed down in *N. L. R. B. v. Lodge 850, etc. (American Iron and Machine Works Co.*, U. S. D. C. E. D. Okla., Case 6428, Oct. 25, 1954).

any firm engaged in a controversy with a union. It was found that there had been direct inducement by the union involved of employees of secondary employers in aid of a labor dispute it had with McAllister. These efforts were successful even though at each of the three carriers involved a notice to employees was posted:

> Our Company is not having a labor dispute with any labor union. As a common carrier holding authorities under Federal and State laws, we are required to transport all commodities properly tendered to us.
>
> Therefore, we direct all of our employees to handle freight received by us, without discrimination as to shippers or motor carriers who may be interlining freight with us. This includes freight which we originate and is destined beyond our line in which specific routing is furnished to us by the shipper.

Two members of the Board joined in an opinion holding that secondary employers could not waive the provisions of Section 8 (b) (4) (A) since they were specifically intended to protect the public interest. They held that the *Conway* doctrine should be reversed and that it should be held that hot cargo clauses do not constitute a valid defense to charges of violations of Section 8 (b) (4) (A).

Two members of the Board joined in a dissenting opinion upholding the *Conway* doctrine as developed in later Board and court cases.

A separate concurring opinion was filed by the Chairman. He joined in the finding of a violation of the Act. However, he declared, "I do not find it necessary, or even appropriate, to overrule the Board's Conway decision, • • •

nor would I go so far as to characterize the 'hot cargo' provision of the contract as being contrary to public policy." Nor, he stated would he treat the private agreement as supreme.

> I doubt that public policy requires us to invalidate a hot cargo provision any more than it requires us to raise such a provision to a dignity which permits it to override other relevant facts. I will assume for the purpose of this case that the secondary employers and the union could lawfully (insofar as the Statute is concerned) contract for a hot goods provision, and they could also mutually abide by it. Moreover, I will assume that, had they done so, there would have been no showing of a violation of Section 8 (b) (4). This, I conclude, is the holding in the *Conway* case, and since it has court approval, I would be loathe to disturb it.

The standard the Chairman applied to the case is as follows:

> I am convinced that acceptance of the *Conway* decision would not dispose of this case. Here, the facts which are set forth in the majority decision disclose, and the Trial Examiner found, that the Unions affirmatively induced and encouraged their members to refuse to handle McAllister freight. Since this was done in furtherance of an objective interdicted by Section 8 (b) (4), the conduct here is violative of the plain and literal language of the Section. It is impossible to say here, as in *Conway*, that there was no unlawful "inducement" or "refusal" on the part of the employees to handle McAllister freight. This is so for the simple reason that the secondary employers

here posted notices to their employees directing them to handle all freight without discrimination. These notices were posted for the express purpose of putting employees on notice that they were expected to handle McAllister's goods when presented at the docks.

In the face of this affirmative evidence that the employees were acting contrary to explicit instructions, which was not true in *Conway*, I am unable to escape the conclusion that there was a clear "refusal" by the employees to handle McAllister freight.

Thus, we are confronted here with a case in which all of the elements of a violation—inducement, refusal, and unlawful objective—have been proved. The fact that one or more of these essential elements *might have been lacking* had the secondary employer adhered to his contract undertaking to boycott "hot cargo" is not enough to bring this case within the holding of the *Conway* decision. The General Counsel issued the complaint, and tried the case on the theory that this case was distinguishable from Conway, and I agree with his position. Accordingly, I concur in the finding that Respondents have violated Section 8 (b) (4) (A) and (B).

Local 680 contends that since, in the *McAllister* case there was a majority holding of a violation of Section 8 (b) (4) (A) only to the extent that limitations outlined in the chairman's opinion were met, the case stands for the proposition that there is a violation only when employees on inducement or direction of their union refuse a direct and affirmative order from their employer to handle goods of a primary employer. Local 680 contends that it at-

tempted to follow and obey this decision. It points out that its letter to Local 680 stewards was the only information sent them about the Crowley's dispute, that stewards and members generally had been told to obey instructions from their employers even if they believed that a violation of the contract with the Union had occurred, and that no affirmative instructions of the type used in the *McAllister* case had been given by any employer to any union member who was not handling Crowley's products. It also contends that in one instance where a steward ordered members not to handle Crowley's products, Local 680 disavowed his action the next day.

The Board, in the *Sand Door* case, *Local 1976, etc. (Sand Door and Plywood Co.)*, 113 NLRB No. 123, considered whether a contract clause with a secondary employer providing, "Workmen shall not be required to handle non-union material," removed certain conduct from the proscription of Section 8 (b) (4) (A) under the so-called *Conway* doctrine. Two members of the Board joined in an opinion holding that such a "hot cargo" clause was no defense when employees were approached by their union and urged not to handle goods of a primary employer. They said in part:

> It is well settled that, where an employer, at the request of a union which refrains from the use of threats or direct appeals to his employees, voluntarily agrees to boycott the goods of another employer, there is no violation of Section 8 (b) (4) (A) because there has been neither a strike nor inducement or encouragement of employees to engage in such conduct. . . .

* * * Insofar as such contracts govern the relations of the parties thereto with each other, we do not regard it our province to declare them contrary to public policy. However, we do not agree that unions, which are parties to such contracts, may approach *employees* of the contracting employer and induce or encourage them to refuse to handle the goods of another employer with immunity from the sanctions of Section 8 (b) (4) (A). In our opinion, such conduct constitutes inducement or encouragement of employees to engage in a concerted refusal to handle goods for an object proscribed by Section 8 (b) (4) (A) no less than it does in the absence of such agreement * * *.

The Employer, but not the union, may instruct his employees to cease handling goods sought to be boycotted. Until the Employer instructs his employees that they need not handle the "unfair" product, a strike or concerted refusal to handle such goods constitutes "a strike or concerted refusal in the course of employment" to handle the goods within the meaning of Section 8 (b) (4) (A) * * *.

We hold that, regardless of the existence of a "hot cargo" clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present * * *.

As to the point first raised in the *Pittsburgh Plate Glass* case, *supra*, as to meaning of the words in the statute "in the course of their employment," they hold that this phrase was intended to distinguish between employees

in their capacity as employees and employees in their capacity as consumers.

One member concurred in the result, but stated he was convinced that hot cargo clauses were contrary to public policy. Two members dissented on jurisdictional grounds. One member also disagreed with the approach of the majority to hot cargo clauses and stated, in substance, that such clauses were valid and that it was the right and duty of a union to inform its members of their rights under a contract and to take action to prevent a breach or repudiation of a contract.

The undersigned concludes that the general rule enunciated in the *Sand Door* case is applicable herein and it will be applied. In addition, the undersigned relies on the express language of the clause which was in the standard contracts of Locals 680 and 338. This clause provided, "It shall not be a violation of this agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer * * * with whom these locals or certain other sister locals had a dispute. A companion clause dealt with pickups and deliveries. These clauses were part of a contract dealing with the rights and obligations of an employer, the particular union involved, and employees. It contained provisions governing discipline and discharge of employees for failure to obey orders. These clauses gave the employees certain rights in the event they individually or collectively refused to handle shipments from employers with whom the named locals had a dispute. In and of itself the contract did not deal with and could not legalize conduct aimed at other employers and in violation of a statute. The

point is developed in the opinion in the New Jersey proceeding in this case, 433 Fed. Supp. 336, 341.

What has become known as the *Conway* doctrine would give added import to a hot cargo clause, such as the one involved here. This doctrine has been examined and re-examined in several cases and has resulted in split decisions in Board cases where it has been considered. In view of this situation and the possibility that the *Conway* doctrine may be given further examination, the undersigned makes the following comments on certain of its aspects.

In the *Conway* case, clauses very similar in import to the ones in the present case were considered. They provided, "The Union reserves the right to refuse to handle goods from any firm or truck which is engaged in any controversy with this or any other Union." There was a similar clause on pickups and deliveries. Union stewards employed by secondary employers refused to handle freight of a primary employer and the secondary employer acquiesced in the refusal by not doing anything about it. The passage was advanced that the secondary employers, in their contracts with the union involved had, "in effect, committed in advance to boycott Conway's" (the primary employer). "As they consented, their employees' failure to deliver freight to or accept freight from Conway is not in the literal sense a 'strike' or 'refusal' to work within the meaning of the Act." (187 NLRB 972, 973.) In the opinion of the undersigned a distinction must be made between an agreement by an employer that he will not handle goods of a primary employer and an agreement by him that employees may refuse to handle certain goods. The former situation is an agreement by an employer to

boycott goods; in the latter, the secondary employer agrees that his employees may stop handling certain goods, if they choose. Both situations were present in the *Conway* case. Actually, in *Conway* secondary employees did refuse to handle deliveries from a primary employer. The hot cargo clause of the contract came into play *because* they had so refused. It furnished a basis for protection of those employees from discipline or discharge by their employer because of their failure to perform their regular duties.

The *Conway* case involved several important and difficult issues besides the nature and legal effect of hot cargo clauses and the particular one involved in the case. The Board's decision was affirmed in the Court of Appeals. An examination of the majority opinion indicates that there was extensive argument before the Court on the question whether pressure on *neutral employers* to stop accepting shipments was violative of Section 8 (b) (4) (A). It does not appear that the meaning and scope of the exact language of the particular hot cargo clause received similar consideration, although there is some mention of it in the briefs filed by Conway.

In the *Pittsburgh Plate Glass* case, 105 NLRB 740, 744, the point was made that since the hot cargo clause provided that it would not be a violation of the contract or a cause for discharge for employees to refuse to handle "unfair goods," a refusal to handle such goods was not "in the course of their employment," within the meaning of Section 8 (b) (4) (A) since such work was excluded from the required job duties. The Board, in the later *Sand Door* case construed the statutory phrase as meant to distinguish between employees in their capacity as employees as

employees in their capacity as consumers. Also involved is the question whether an exclusion of the handling of goods on the sole basis of whether the primary employer is engaged in a labor dispute can stand as a defense to a Section 8 (b) (4) (A) proceeding in view of the purpose and policy behind this section of the Act.

The point has been made in some cases, especially in *M. Hilsted, Supra*, that there can be no refusal, as such, until a direct order from an employer is issued and not followed. When an employee is hired to regularly load and unload trucks and when a truck appears at a loading dock he either stands by and does nothing or announces he will not unload the truck, this is a refusal, in the opinion of the undersigned. An additional and affirmative order can only restate the duties of the employee. He is already obligated to do what he has failed to perform. Of course, evidence is admissable to determine whether there has been a misunderstanding instead of a refusal. The point the undersigned wishes to make is that a refusal can consist of a failure to perform regularly assigned work.

2. Violation of Section 8(b) (4) (A)

employees were under contractual obligation and oral instruction from union officials to obey orders of their employers, even though they considered them in violation of the standard contract. Significantly the letter to the employers quoted provisions of the contract giving employees a right to refuse to handle hot cargo. It did not point to the clause in the contract requiring employers not to aid other companies "in any fight that may be waged against the Union" (Sec. 18 (b) of the standard milk contract.) It may be arguable whether employees were expected to obey affirmative orders from their employers in view of their contractual protection, but it is apparent that in the first instance they were expected to and did stop handling Crowley's products on April 1, 1955, the date set in the letter for breaking business relations with Crowley's.

Keber, Local 680 secretary-treasurer, testified that he expected all members not to handle Crowley's products in the absence of a direct order from their employer. Shuta, Local 680 steward at International Milk Company, testified that he posted the letter on the company bulletin board and would not unload Crowley's trucks because of the contents of the letter. His description of his refusal to unload a Crowley's truck on April 4, 1955, illustrates quite clearly his understanding of what Local 680 expected him to do.

At Sunrise Dairies the Local 680 steward, Del Vecchio, did not post the March 9 letter, but he did tell two employees of it and that they were advised not to accept any of Crowley's products. A Crowley's shipment was not handled by the employees on April 1.

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North Jersey Dairyland was the only concern whose steward was reprimanded by Local 680 for telling employees not to handle Crowley's products. However, the record indicates that Local 680 officials were concerned that the instructions of the steward, Elias, might be construed by the employees as a direction to disobey affirmative instructions. There was no effort by Local 680 to instruct employees they could handle Crowley's products even in the absence of an affirmative order.

Isaac Fevang, Local 680 steward at Joseph Thompson & Sons testified he understood the March 9 letter to mean that union members should not handle Crowley's products. He did not tell the other union members of the letter, but he did ask his employer not to handle Crowley's products.

Under the standard set forth in the *Sand Door* case, *supra*, "regardless of the existence of a 'hot cargo' clause, any direct appeal to employees by a union to engage in a strike is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present."

The undersigned concludes that the letter of March 9, 1955, sent by Local 680 to the stewards of Crowley's customers, International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, together with oral transmission of the contents of the letter by the stewards and their orders to employees, as set forth in this section, constituted inducement or encouragement of employees to engage in a concerted refusal to handle Crowley's goods within the meaning of the Act and as applied in the *Sand Door* case, *supra*. An object of this activity was to force a cessation of business between

the secondary employers and Crowley's, an object proscribed by the Act.[9]

Local 680 contends that where a steward did not tell his fellow employees of the March 9 letter there was no "concerted refusal" within the meaning of Section 8 (b) (4) (A). Such a contention has been rejected by the Board.[10]

As to Local 338, it is clear that its activities with respect to Edward Greco, doing business as Maple Grove Dairy violated both the test set forth in the *Sand Door* and in the McAllister cases, *supra*. Employees of Maple Grove were urged by a union official at a union meeting not to handle Crowley's products. Subsequently they were ordered by Local 338 not to handle Crowley's products and they have persisted in their refusal despite an affirmative order to handle those products.[11] Since the Maple Grove employees acted under direct instructions from Local 338, that Local not only induced and encouraged employees to refuse to handle Crowley's products, but it also engaged in a strike or concerted refusal.

For reasons previously stated, the undersigned deemed it unnecessary to make any findings with respect to em-

[9] It is not necessary to decide whether the sending of the March 9 letter to stewards of companies other than those shown on the record to be employees of the companies handling Crowley's products was violative of the Act since such a finding would merely be cumulative and would not affect the relief to be directed.

In making the above findings, the undersigned has not relied on any of the testimony in the New Jersey proceeding which was contraverted. He has relied principally on the documentary evidence and the testimony of the stewards themselves.

[10] *Local 11, United Brotherhood of Carpenters and Joiners, etc. (General Millwork Corporation)*, 113 NLRB No. 124, n. 6).

[11] Local 338 has argued in a memorandum that the denial of an injunction against Local 338, on application of the Regional Director requires that the decision of the undersigned and the Board must conform to that decision. For the reasons set forth in *N. L. R. B. v. Denver Building and Construction Trades Council, et al.*, 341 U. S. 677, 681, this contention is rejected.

ployers who were parties to the standard contract with Local 338, but who were not shown in this proceeding to have been customers of Crowley's.

3. Violation of Section 8 (b) (4) (B)

Section 8 (b) (4) (B) provides that it shall be an unfair practice for a labor organization or its agents to engage in or induce or encourage employees to engage in a strike or refusal to handle goods or perform services where an object is forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees, unless such labor organization is a certified representative. The complaint alleges and the General Counsel contended that both Local 680 and Local 338 violated this section of the Act and were attempting by their activities involving secondary employers to force Crowley's to bargain with them.

The General Counsel relies, primarily, on the history of attempts by these two locals to attain collective bargaining status at Crowley's. Local 680 filed a representation petition in February 1948 for a unit at Crowley's Paterson plant. Later in that year it had filed charges of unfair labor practices against Crowley's including an allegation of unlawful refusal to bargain. A complaint was issued by the General Counsel. On March 13, 1950, the Board issued its Decision and Order, finding that Crowley's had violated certain provisions of the Act, but rejecting the refusal to bargain allegation. When Local 680 sent its letters to the secondary employers and shop stewards on March 9, 1955, 5 years after the above Board decision, it referred to that proceeding in the very beginning of the letter:

> This Local Union, Local 680, and also our sister Local, 338, are and have been for some years, directly engaged in a labor dispute with Crowley's Milk Co. In fact, on a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Co. was found by the Board and the Courts to have engaged in an unfair labor practice.

After quoting the hot cargo clause of its standard contract, Keber stated in the letter "This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Co." Cooperation of the secondary employers then was requested. In its letter of September 26, 1955, to secondary employers Local 680 reiterated that its labor dispute with Crowley's still continued, despite rumors to the contrary.

Local 680 points out that the Board decision of 1950 was never appealed by it and it never requested Crowley's to bargain since that date. The only request to bargain that it made was in 1948. Counsel for Local 680 pointed out that the term, "labor dispute," as defined in the Act encompasses more than strikes for recognition, and contended that Local 680's picket signs carried the statement that Crowley's was unfair because the Board and the Courts had so held. He also stated, "The dispute concerns the association. We are trying to get the employees of Crowley to join our union. There is nothing in the Act which indicates that that is improper."

In the case of Local 338, it had filed representation petitions for a unit at Crowley's Newburgh plant in 1950 and 1951. Each had been dismissed the following year. Local 338's organizing efforts at Crowley's date back to 1945

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In its March 17, 1955, letter to secondary employers, Local 338 began the letter by stating:

> "Local 680 and Local 338 are directly engaged in a labor dispute with Crowley's Milk Company on a charge filed by Local 680 with the National Labor Relations Board. Crowley's Milk Company was found by the Board and the Court to have engaged in an unfair labor practice."

Its pickets carried signs urging Crowley's employees to join Local 338.

Local 680 contends that it should not be held to have violated Section 8 (b) (4) (B) of the Act on the basis of a request for recognition made in 1948. Local 338 argues that it would be unfair to find it had violated the Act because it attempted to use the Board's facilities in 1950 and 1951 for a certification of representatives.

The issue here is the object of these Respondents in their current activities. Their picket signs did not indicate that they sought recognition from Crowley's; nor did they make any demands on Crowley's. Yet, those factors do not dispose of the issue, although they must be weighed with other facts.[12] If the current activities of these Respondents had had no link with past activities, the contentions of the Respondents would have been fully supported by the record. However, there are such links. According to Keber, Local 680 stopped picketing Crowley's in 1949 when he was advised that an Eastern Conference of Teamsters

[12] *International Union of Operating Engineers, Local 12 (Crook Company)*, 115 NLRB No. 9; *International Brotherhood of Teamsters, Local No. 41, etc., Union (Chevrolet Company)*, 96 NLRB 957, 958; *Bonnaz, Hand Embroiderers (Gemsco)*, 111 NLRB 82, 89.

would be formed through which disputes, such as its dispute with Crowley's would be better handled. Apparently, in 1955 the time was considered propitious for taking common action against Crowley's. The decision was made at a meeting of the Conference attended by representatives from the International and local unions who handled dairy products throughout the Eastern Seaboard, including representatives of the Respondents. At that time there was no outstanding unfair labor practice charge or representation petition filed by these Respondents against Crowley's nor had there been any communication between these unions and Crowley's for a long time. The Respondents began picketing and sent out letters to secondary employers stating they had a long-standing labor dispute with Crowley's and urging the secondary employers to break off business relations with Crowley's. The Respondents were within their rights in trying to organize employees of Crowley's, but their activities with regard to the secondary employers was hardly consistent with such a plan as their sole objective.

The undersigned concludes that the preponderance of the evidence establishes that the conference meeting at which joint action was agreed to was the link between earlier unsuccessful efforts by these Respondents and their later efforts to bring economic pressure on Crowley's to obtain the same objective. It is further concluded that the conduct of these Respondents with respect to the secondary employers was not protected and since an object of their efforts was to secure recognition and bargaining rights from Crowley's, their conduct was violative of Section 8 (b) (4) (B) of the Act.

4. Joint responsibility

The General Counsel contends that the Respondents were engaged in a joint venture and should be held jointly responsible for all activities found violative of the Act. The evidence does establish that the Respondents participated in a meeting at which it was decided to take action against Crowley's. The letters sent by each local were almost identical in content and sent within a week of each other. Picketing activities by each were close in time. However, from that point on there was a very significant divergence in tactics. Local 680 made efforts to conform to its interpretation of the latest Board decision on secondary boycotts, Local 338 did not. Each local, as far as the evidence shows, determined for itself just how it would implement the joint decision to proceed against Crowley's. Under these circumstances the undersigned concludes that there was not such a joint control over details of the campaign to warrant holding each local for the activities at the other.[18] This is especially true in the case of Local 680. The undersigned therefore rejects the contention that the Respondents should be held jointly and severally liable.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Charging Party and the named secondary employers, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to

[18] Compare, *United Mine Workers of America, (Union Supply Company)*, 90 NLRB 436; *District 50 United Mine Workers of America (Tungsten Mining Corporation)*, 106 NLRB 903.

burden and obstruct commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondents have violated Section 8 (b) (4) (A) and (B) of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative action which it is found necessary to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Milk Drivers and Dairy Employees Local Unions No. 680 and No. 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The Respondent, Local 680 has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act, by inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, to engage in a strike or a concerted refusal in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is to force or require their employers to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products, and with a further object to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 680 as the representative of certain of its employees, although Local 680 has not been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondent, Local 338, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act, by engaging in and or inducing and encouraging employees of Edward Greco, d/b/a Maple Grove Dairy, to engage in a strike or a concerted refusal in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is to force or require their employer to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products, and with a further object to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338 as the representative of certain of its employees, although Local 338 has not been certified as the representative of such employees under Section 9 of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law it is recommended that:

1. The Respondent, Local 680, shall cease and desist from inducing and encouraging employees of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to

handle or work on its products; (b) to force or require Crowley's Milk Company, Inc. to recognize or bargain with Local 680 as the representative of certain of its employees, unless and until Local 680 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

2. The Respondent, Local 338, shall cease and desist from engaging in and or inducing and encouraging employees of Edward Greco, d b a Maple Grove Dairy, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of Crowley's Milk Company, Inc., where an object thereof is (a) to force or require an employer or other person to cease doing business with Crowley's Milk Company, Inc., or to handle or work on its products; (b) to force or require Crowley's Milk Company, Inc., to recognize or bargain with Local 338 as the representative of certain of its employees, unless and until Local 338 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

3. The Respondents shall take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their respective business offices copies of the attached notices: Appendix A in the case of Local 680 and Appendix B in the case of Local 338. Copies of said notices, to be furnished by the Regional Director for the Second Region, after being duly signed by official representatives of the Respondents, shall be posted by them immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to

members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

Local 680 shall also sign copies of Appendix A which the Regional Director shall submit for posting at the premises of International Milk Company, Sunrise Dairies, North Jersey Dairyland, Inc., and Joseph Thompson & Sons. Local 338 shall also sign a copy of Appendix B for posting at the premises of Edward Greco, d b a Maple Grove Dairy.

(b) Notify the Regional Director for the Second Region in writing within twenty (20) days from the date of service of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith.

It is also recommended that unless the Respondents shall, within twenty (20) days from the date of service of an order transferring this case to the Board, notify the Regional Director, in writing, that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondents to take the action aforesaid.

Dated at Washington, D. C., this 21st day of February, 1950.

SIDNEY L. FEILER,
Trial Examiner.

Appendix A attached to Intermediate Report and Recommended Order.

IR-833

APPENDIX A.

NOTICE

TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT induce or encourage employees of INTERNATIONAL MILK COMPANY, SUNRISE DAIRIES, NORTH JERSEY DAIRYLAND, INC., and JOSEPH THOMPSON & SONS, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 680 as the representative of certain of its employees, unless and until Local 680 has

been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

JR-833

APPENDIX B.

NOTICE

TO ALL MEMBERS OF MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT engage in and/or induce or encourage employees of EDWARD GRECO, d/b/a MAPLE

Appendix B attached to Intermediate Report and Recommended Order.

GROVE DAIRY, or any other employer, to engage in a strike or concerted refusal, in the course of their employment, to handle or work on products of CROWLEY'S MILK COMPANY, INC., where an object thereof is (a) to force or require an employer or other person to cease doing business with CROWLEY'S MILK COMPANY, INC., or to handle or work on its products; (b) to force or require CROWLEY'S MILK COMPANY, INC., to recognize or bargain with Local 338 as the representative of certain of its employees, unless and until Local 338 has been certified as the representative of such employees under the provisions of Section 9 of the Act.

MILK DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[1] **Stenographic Transcript of Testimony at Hearing of October 31, 1955.**

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SECOND REGION

In the Matter of:

MILK DRIVERS & DAIRY EMPLOYEES LOCAL UNION NO. 680, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL,

MILK DRIVERS & DAIRY EMPLOYEES LOCAL NO. 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL

and

CROWLEY'S MILK COMPANY, INC.

Case Nos. 2-CC-333
2-CC-355

2 Park Ave.
New York, New York

Monday, October 31, 1955

Pursuant to notice, the above-entitled matter came on for hearing at 1:00 o'clock p. m.

Before: Sidney L. Feiler,

Trial Examiner

Stenographic Transcript of Testimony at Hearing of November 1, 1955.

Appearances:

Samuel M. Kaynard, Counsel for the General Counsel, National Labor Relations Board.

Lloyd C. Anderson, 193 Water Street, Binghamton, N. Y., appearing on behalf of the Employer.

Parsonnet, Weitzman & Cransky, By: Thomas L. Parsonnet, 1060 Broad Street, Newark, N. J., appearing on behalf of Local 680.

Samuel J. Cohen, 50 E. 42nd St., New York, N. Y., appearing on behalf of Local 338.

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[70] **Stenographic Transcript of Testimony at Hearing of November 1, 1955.**

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[72] PROCEEDINGS.

• • •

[90] Trial Examiner: That is the way I understand, that you people are stipulating that if these people were called to this proceeding, they would testify as indicated, that if the same questions were asked them as appear in that record, they would testify as indicated under the portions of the transcript and the exhibits introduced here.

• • •

[92] Trial Examiner: I don't want to get too far away from it. I just want to raise this point with you gentlemen.

I did not see these people, and I don't know them. If there is any question of credibility in this record, all the stipulations in the world will not help me resolve it.

• • •

General Counsel's Exhibit 4.

[94] Trial Examiner: On the record.

I understand from counsel, as a result of an off the record discussion, that General Counsel and Mr. Parsonnet feel, that while there would appear to be some conflict of testimony in different portions, they feel there is no material conflict and that it would not interfere with the arrival of any findings of fact.

Is that about it, gentlemen?

Mr. Parsonnet: That is my opinion.

• • •

General Counsel's Exhibit 4.

AGREEMENT

New York City, Northern New Jersey
and
Southern New York State Area-Wide
Union Agreement in the
Ice Cream Industry
of the
Ice Cream Drivers
and
Employees Union
LOCAL 680
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America
A. F. of L.
535 High Street, Newark, N. J.
Expires April 30, 1955
Telephone: MArket 2-4103
(Union Label) 285

General Counsel's Exhibit 4.

MILK DRIVERS AND DAIRY
EMPLOYEES LOCAL 680
of the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
535 High Street, Newark, N. J.

MArket 2-4103

Regular Meetings—3rd Thursday—7 P.M.

Special Ice Cream Meetings
2nd Thursday of
February, April, May and September—8 P.M.

AT NEWARK LABOR LYCEUM
704 South 14th Street, Newark, N. J.

No Meetings July and August

Lawrence McGinley ..... President
Richard Keber ..... Secretary-Treasurer
William Williamson ..... Vice-President
James Rafferty ..... Recording Secretary
David Cronin ..... Trustee
John Hoehler ..... Trustee
George Sherman ..... Trustee
Albert Cooke ..... Business Representative
Anthony Iorio ..... Business Representative

General Counsel's Exhibit 4.

ICE CREAM DRIVERS
AND
EMPLOYEES UNION
LOCAL 680
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and
Helpers of America
A. F. of L.

• • •

5. • • •

9

(d) It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Company received from any employer with whom Local 757 or Local 680 or Local 338 is directly engaged in a labor dispute, provided such material comes into the Company's possession more than 48 hours after the Union gives written notice to the Company of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom

10

Local 757 or Local 680 or Local 338 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Company of the existence of such labor dispute.

• • •

11

General Counsel's Exhibit 16.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
LOCAL 338
2 Crary Avenue
Mount Vernon, New York

March 17, 1955

Gentlemen:

Local 680 and Local 338 are directly engaged in a labor dispute with Crowley's Milk Company. On a charge filed by Local 680 with the National Labor Relations Board, Crowley's Milk Company was found by the Board and the Court to have engaged in an unfair labor practice. May we remind you of Section 18 (d) or our contract which reads as follows:

> "It shall not be a violation of this Agreement for members of the Union to refuse to handle material in the possession of the Employer received from any employer with whom Local 338, or Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such material comes into the Employer's possession more than 48 hours after the Union gives written notice to the Employer of the existence of such labor dispute. It shall not be a violation of this Agreement for the members of the Union to refuse to make deliveries to or pickups from any employer with whom Local 338, Local 584, or Local 602, or Local 607, or Local 680 is directly engaged in a labor dispute, provided such refusal occurs more than 48 hours after the Union has given written notice to the Employer of the existence of such labor dispute."

General Counsel's Exhibit 17.

This is to give you written notice that Local 680 and 338 are engaged in a labor dispute with Crowley's Milk Company. We shall expect that, by or before April 1, 1955, you will discontinue receipt of any materials of Crowley's Milk Company and will discontinue making deliveries or pickups to or from this Company, as long as this labor dispute continues.

Your cooperation in this regard is urgently requested. Please acknowledge receipt of this letter.

Very truly yours,

JOHN A. MANCHESTER,
Secretary-Treasurer,
Milk Drivers and Dairy Employees,
Local 338.

General Counsel's Exhibit 17.

March 24, 1955

I. B. of T.
Local 338
2 Crary Avenue
Mount Vernon, New York

Dear John:

Reference to your letter of March 16, I have contacted Continental Can Company to make up containers under our trade name for the by-products we purchase from Crowley's Milk Company. The best service they can promise is 6 to 8 weeks to get our plates made up and approved, so Best regards

R. GRECO.

General Counsel's Exhibit 18.

Aug. 9th, 1955

NOTICE TO ALL EMPLOYEE'S

As your employer I, hereby direct you to distribute & sell all milk & Milk Products that I purchase for resale. Including products from Crowleys Milk Co.

ED GRECO.

BATAVIA TIMES PUBLISHING CO., BATAVIA, N. Y.
3-19-57-50